IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 1217 of 2001
(Old No. 257 of 1987)

Ram Singh
R/o Jiwanpur, P.S. Bazpur
District Nainital (Now district U.S. Nagar).

…….. Appellant

Versus

The State

…….. Respondent

Mr. Kailash Joshi, Advocate for the appellant.
Mr. S.S. Adhikari, A.G.A. with Mr. B.S. Parihar, Brief Holder for the respondent State.

Hon. Prafulla C. Pant, J.

This appeal, preferred under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 11.06.1986, passed by learned Special Judge / Additional Sessions Judge, Nainital, in Sessions trial No. 193 of 1983, whereby the appellant Ram Singh has been convicted under Section 412 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.), and in Sessions Trial No. 312 of 1983 in respect of the offence punishable under Section 25 of the Arms Act, 1959. (He is acquitted of the charge of offences punishable under Section 396 and 120-B of I.P.C.). The convict Ram Singh has been sentenced to undergo rigorous imprisonment for a period of three years under Section 412 of I.P.C. He is further directed to undergo rigorous

imprisonment for a period of three years under Section 25 of the Arms Act, 1959.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that on 12.06.1983, at about 11:30 P.M., when Swarn Singh (deceased) was sleeping in his house in Kuan Khera, within the limits of police station Kashipur, District Nainital (now district Udham Singh Nagar), 9 -10 miscreants entered in his compound and tied Swarn Singh with a rope on his cot. On this, his wife P.W. 6 Nasib Kaur and his sister Bant Kaur, raised alarm. Hearing their shrieks, neighbours P.W. 3 Ratan Singh and one Jogendra Singh rushed to the spot. Other witnesses P.W.4 Apar Singh and others also reached there. Swarn Singh recognized three of the miscreants namely Nathu, Bhura and Chhote, and on seeing this, the miscreants poured sand on the face of Swarn Singh and gave him blows with Dandas and Lathies. In the incident, Smt. Nasib Kaur and Smt. Bant Kaur, also received injuries. The miscreants looted a D.B.B.L. gun a revolver, some clothes, ornaments, utensils and cash etc. from the house of Swarn Singh. There was electric light in the house of the victim. At 01:00 A.M. i.e. after about one and a half hour, oral report was lodged by P.W.3 Ratan Singh with police outpost Kundeshwari. Swarn Singh died due to the injuries received by him in the incident. The police rushed to the spot and prepared the list of articles looted from the house of Swarn Singh. P.W. 23 Sub Inspector Tejbir Singh investigated the crime. During investigation

looted property was recovered from Karan Singh, Gulab, Ramphal, Ram Singh (present appellant) and Chiranji. Some looted property was also recovered from Om Prakash, Prem and Sipattar @ Ram Aautar. The culprits were put to identification parade. Also, identification was held in respect of the property recovered. After investigation, a charge sheet was filed by the police against ten accused, namely Karan Singh, Gulab, Ramphal, Sipattar @ Ram Autar, Prem, Smt. Rajwati, Smt. Ganga Dei, Ram Singh (present appellant), Om Prakash and Chiranji.

4. The Magistrate, on receipt of the charge sheet, after necessary copies were supplied to the accused, as required under Section 207 of Cr.P.C., committed the case to the court of Sessions, for trial. Since, from the appellant Ram Singh, apart from one gold ring, some clothes, a D.B.B.L. gun (Ext. –1) and cartridges, looted in the incident are said to have been recovered, two charge sheets were filed against him, one relating to the offences punishable under Section 396, 412, 120-B of I.P.C., in which he was one of the ten accused, and also a separate charge sheet was filed in respect of offence punishable under Section 25 of the Arms Act, for keeping D.B.B.L. gun within a license. Both the cases were committed by the Magistrate to the court of Sessions for trial, which were numbered as Sessions Trial No. 193 of 1983 and Sessions Trial No. 312 of 1983.

5. The trial court framed charge of offences punishable under Section 396, 412 of I.P.C. against the accused / appellant Ram Singh. Separate charge sheet were framed

against other accused. The accused / appellant Ram Singh pleaded not guilty, and claimed to be tried. On this prosecution got examined P.W. 1 Dr. R.N. Singhal (who conducted the postmortem examination of the deceased); P.W. 2 H.C. Karnataka, S.D.M. Kashipur (who got conducted the test identification parade of the accused persons); P.W. 3 Ratan Singh; P.W. 4 Apar Singh; P.W. 5 Bahadur Singh; P.W. 6 Nasib Kaur; P.W. 7 Bant Kaur; P.W.8 Atma Ram; P.W. 9 Kataar Singh; P.W. 10 Vikram Singh; P.W. 11 Constable Ramesh Chandra; P.W. 12 Head Constable Sachchidanand; P.W. 13 Constable Kabool Singh; P.W. 14 Head Constable Siyaram Shukl; P.W. 15 Constable Tota Ram; P.W. 16 Cosntable Masqoor Khan; P.W. 17 Cosntable Khem Singh; P.W. 18 Ram Dular, the then Tehsildar – Magistrate (who conducted the identification test of the case property); P.W. 19 Ranbir Singh (Station Officer); P.W. 20 Hazari Lal (public witness); P.W. 21 Head Constable Nandan Singh; P.W. 22 Constable Sevak Lal; P.W. 23 Tejbir Singh (Investigating Officer); P.W. 24 Iqbal Singh: P.W. 25 Rupendra Singh; P.W. 26 Kartar Singh and P.W. 27 Chabba Singh. The prosecution evidence was put to the accused under Section 313 of Cr.P.C. by the trial court. Accused / appellant Ram Singh alleged the same to be false. After hearing the parties, the trial court did not find Ram Singh guilty of the offence punishable under Section 396 of I.P.C., but he was found guilty under Section 412 of I.P.C. and the one punishable under Section 25 of the Arms Act. Again, the accused were heard on sentence, and accused / appellant Ram Singh was sentenced to undergo rigorous

imprisonment for three years under Section 412 of I.P.C. He was further directed to undergo three years rigorous imprisonment under Section 25 of the Arms Act. Both the sentences were directed to run consecutively. Aggrieved by said judgment and order dated 11.06.1986, passed in Sessions Trail No. 193 of 1983 and Sessions Trial No. 312 of 1983, this appeal was preferred by the convict Ram Singh before the Allahabad High Court on 28.02.1987, from where it is received by transfer to this Court under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

6) This Court does not think it necessary to reproduce the antemortem injuries found on the person of the deceased, and the other related evidence regarding the offence punishable under Section 396 and 120-B of I.P.C., as the appellant has already been acquitted of said charge and there is no appeal filed by the State on that count.

7) The recovery of the looted property has been proved against the accused / appellant Ram Singh by P.W. 20 Hazari Lal (public witness) and P.W. 19 Ranbir Singh (Station Officer). According to these witnesses recovery from the accused Ram Singh was made on 16.06.1983, at 10:00 A.M., from his hut. In respect of the recovery made from accused Ram Singh, recovery memos (Ext. A –26 and Ext. A –27) were also proved on the record. Gold ring and the other looted property are identified by P.W. 6 Nasib Kaur, widow of the deceased Swarn Singh.

8) There is no reason to doubt the testimony of the witnesses regarding the fact that the aforementioned looted articles were recovered from the accused / appellant Ram Singh. This Court concurs with the finding given by the trial court which is recorded after lengthy discussion of the evidence adduced by the prosecution witnesses. As such, the conviction of the accused / appellant Ram Singh recorded by the trial court under Section 412 of I.P.C. and that of one punishable under Section 25 of the Arms Act, deserves to be maintained.

9) However, on the point of sentence, learned counsel for the appellant submitted that it is harsh to make sentences awarded against the appellant to be served out consecutively. It is further submitted on behalf of the appellant that serving out both the sentences concurrently would have served the ends of justice. From the record it appears that the appellant had been in jail during the trail for a period of three years and 11 months. For last 2 months, again, he is in jail after he was taken into custody, during the pendency of this appeal. As such, he has infact already undergone more than 4 years in this case. Considering the facts and circumstances of the case, this Court is of the view that while maintaining the sentence awarded by the trail court in respect of offence punishable under Section 412 of I.P.C., the sentence awarded against the accused / appellant Ram Singh under Section 25 of the Arms Act, may be reduced from three years rigorous imprisonment to rigorous imprisonment for one year.\

10) Accordingly, the appeal is partly allowed. The conviction of the accused / appellant Ram Singh recorded

by the trial court in respect of charge of offence punishable under Section 412 of I.P.C. and one punishable under Section 25 of the Arms Act, is maintained. The sentence of rigorous imprisonment for three years handed over to the accused / appellant by the trial court in respect of offence punishable under Section 412 of I.P.C. is maintained. However, the sentence awarded by the trail court against the accused / appellant in respect of offence punishable under Section 25 of the Arms Act, is reduced to one year. Both the sentences as directed by the trial court were to run consecutively. As discussed above, the appellant has already undergone four years in jail. He shall be set at liberty forthwith, if not wanted in connection with any other crime. The appeal stands disposed of, accordingly.

(Prafulla C. Pant, J.)

Dt. June 19, 2007.
H.Negi